

MICHIGAN'S WATER INFRASTRUCTURE EXPERTS

AMERICAN COUNCIL OF ENGINEERING COMPANIES * AMERICAN SOCIETY OF CIVIL ENGINEERS * MICHIGAN SOCIETY OF PROFESSIONAL ENGINEERS * COUNTY ROAD ASSOCIATION OF MICHIGAN * AMERICAN WATER WORKS ASSOCIATION MICHIGAN SECTION * MICHIGAN RURAL WATER ASSOCIATION * MICHIGAN GROUND WATER ASSOCIATION * AMERICAN PUBLIC WORKS ASSOCIATION MICHIGAN CHAPTER * MICHIGAN MUNICIPAL LEAGUE * MICHIGAN TOWNSHIPS ASSOCIATION * SOUTHEAST MICHIGAN COUNCIL OF GOVERNMENTS

May 23, 2018

Dear Representatives:

We oppose H.B. 5723 because it preempts local control and imposes mandates that will increase costs, delay projects, and lead to senseless litigation. H.B. 5723 will ultimately harm the people of Michigan who we serve.

H.B. 5723 will fundamentally alter the procurement process in Michigan and eliminate the collaborative design process between utilities and their engineers. Currently, engineers work closely with their utility and government clients to develop and design both *standard specifications*, which plan for the needs of an entire system, and *project specifications*, which plan for the needs of an individual project. This collaborative process is critical for long-term planning, development and maintenance of public projects across the state.

H.B. 5723 eliminates this process and unfairly targets standard specifications through its expansive and counterintuitive definition of an "ordinance." Today, utilities and their engineers jointly create standard specifications as a way to plan for their systems' unique needs on the front end. This process promotes efficiency, mitigates foreseeable risks, and saves money. Standard specifications also provide the framework for the development of individual project specifications. Without standard specifications, utilities would have to re-invent the wheel every time there is a construction or maintenance need. This would needlessly burden staff, increase costs, and delay projects.

The proponents of this legislation are not telling you the whole story. The market for pipes is already open and very competitive. **In fact, 13 of the 13 cities (100%) on the proponents' list of "discriminatory" cities currently allow plastic pipe in various applications in their systems.** Where it is not used, there are excellent financial and reliability justifications, and those evaluations are being made when standard specifications are developed. The legislature should not tilt the balance against such careful – and critical – public utility decisions.

Engineers and local communities are not asking for this legislation. Instead, they oppose it because there is no problem with the current procurement process, which leads to the use of numerous piping materials within the hundreds of systems operating in the state. Moreover, H.B. 5723 preempts and completely undermines local control over "piping" projects. It takes away the utilities' and their engineers' ability to make collaborative decisions relating to system service life, asset value, maintenance, life-cycle costs, and serviceability.

H.B. 5723 also harms taxpayers without any upside. The nonpartisan Senate Fiscal Agency found that "[a]ssuming [correctly] that public entities already review options for pipe and piping materials used in local water supply or wastewater systems, **there would not be additional savings**" from similar legislation in the Senate (emphasis added). Although taxpayers cannot expect new savings, they can expect new costs. The bill's new mandates will immediately create compliance costs for public entities, i.e., its taxpayers. Additionally, there will be new risks of service failures and delays because public entities will lose the ability to plan on the front end, and it will impede their duty to respond to

JOIN THE CROWD: REJECT MATERIAL PREFERENCE LEGISLATION



There is a **national, special interest effort** to take water system design decisions from engineers and local communities. The ultimate goal is to use government to manipulate the marketplace.



H.B 5723 is neither practical nor necessary. **It is nothing more than a top-down, government solution to a problem that does not exist.**



Engineers have professional, ethical and legal responsibility for their design decisions, and this legislation undermines their ability to meet these obligations and exposes them to new litigation.



If passed, this legislation will delay much-needed water projects and increase costs through new litigation and additional red tape.



We should reject the efforts of national special interests and continue to allow our local communities and engineers to make these important decisions.

Arizona, Arkansas, Connecticut, Indiana, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Virginia have all considered this type of legislation – and not one state has approved.



Michigan should not be the first and only state to allow special interests to undermine the ability of our local communities and engineers to best serve the public. Our water systems are too important for that.

KEEP SPECIAL INTERESTS OUT OF OUR WATER

VOTE NO ON H.B. 5723

Background

There is a national, special interest effort to deny engineers, utilities, public entities and other water works professionals the ability to design water, wastewater and storm water drainage projects in the manner that best serves the needs of their community.

NO state has passed this type of legislation, and Michigan should not be the first and only to do so.

Similar bills have been introduced and failed in other states, including Arizona, Arkansas Connecticut, Indiana, Ohio, Oklahoma, North Carolina, South Carolina, Tennessee, Texas and Virginia. Congress has also rejected special interest efforts to include this type of preference in the federal highway bill.

Reasons to Protect Our Water Systems from Special Interests and Oppose H.B. 5723

- **H.B. 5723 is nothing more than a top-down, government solution to a problem that does not exist.**
- Engineers and communities need to retain local control in order to determine the best material(s) based on the factors important to the local community.
- Engineers have professional, ethical and legal responsibility for their design decisions, and this legislation undermines their ability to meet these obligations and exposes them to new litigation.
- The ultimate goal of this national effort is to use government to benefit an industry by forcing a product on engineers and water systems even when it is not the best material for a community.
- Nothing in state law currently prohibits local communities from specifying and using the pipe material of their choice, and there is no evidence that engineers and/or local communities in our state have been creating erroneous or otherwise improper specifications for water, wastewater or stormwater projects.
- Our water systems are too important to have outside, special interests undermine the ability of engineers and water works professionals to best serve the public. Furthermore, this type of legislation will only delay water projects and unnecessarily increase costs through litigation and additional bureaucratic red tape.
- All materials are not the same – they have very different service lives, durability, reliability, economic, health and safety characteristics.